

PATENT
U.S.S.N 10/065,326
Atty. Docket 7170-00S-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Zicker et al.
Application No: 10/065,326
Filed: Oct 3, 2002
Group Art Unit: 1617
Examiner: Kim, J
Attorney Reference: 7017-00
Title: Method of Using Omega-3 Fatty Acids

DECLARATION OF STEVEN C. ZICKER UNDER 37 C.F.R. § 1.131

I, Steven C. Zicker, DVM, Ph.D., mindful of the sanctions imposed by 18 U.S.C. § 1001 declare:

1. I am, and at all relevant times was, employed by Hills Pet Nutrition, Inc. ("HILLS"), a subsidiary of the Colgate-Palmolive Company (COLGATE).
2. I am, and at all relevant times was, under an obligation to assign to COLGATE any invention made by me in the course of my employment by HILLS.
3. I believe I am a first and true inventor of the subject matter of the present Application, Ser. No. 10/065,326.
4. At a time before April 12, 2002, my co-inventors and I conceived of and made a canine diet, hereafter "Canine b/d", containing $\geq 0.5\%$, and in preferred embodiments $\geq 1\%$, by weight, on a dry matter basis, of omega-3 fatty acids, and also containing ingredients customary in the art.
5. My co-inventors and I directed preparation of a charge of a preferred embodiment of Canine b/d having a total content of omega-3 fatty acids of $\geq 1\%$.
6. The above-described charge of Canine b/d was used in an otherwise routine 60 day multi-center feeding study, instigated by me and my co-inventors and involving 142 dogs, to determine the effect of diet, especially a diet fortified with omega-3 fatty acids, on canine behavioral characteristics evaluated by the cluster of behavioral categories identified by the acronym DISHA. This cluster of behavioral categories is essentially identical to the known DISH cluster of

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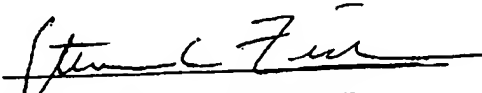
behavioral categories, described in the abstracts of two scientific articles in the field, attached at Exhibit A; with the further inclusion of yet another behavioral category, altered activity level (DISHA).

7. A commercial diet (feed) containing $\leq 1\%$, by weight, on a dry basis, omega-3 fatty acids was used as the control feed in this study. As shown in Exhibit B, this control feed contained *ca.* 0.8% octadecanetrienoic acid (ALA), $<0.1\%$ eicosapentanoic acid (EPA), and $<0.01\%$ docosahexanoic acid (DHA), where all percentages are by weight on a dry matter basis.
8. The above-described multi-center feeding study was carried-out and the results reported to me and my co-workers at a time before April 12, 2002.
9. The results of the multi-center feeding study were publicly disclosed at an international symposium sponsored by HILLS at a time before April 12, 2002; a copy of the paper from the symposium proceedings, available at the time of the symposium, is attached at Exhibit C to this Declaration.
10. As disclosed, *i.e.*, at page 2, column 2, lines 1 - 8 and in Table 1 of the above-referenced paper, dogs receiving the diet of Canine b/d showed significant improvements in all five behavioral categories in the DISHA cluster, relative to dogs receiving the control diet that was not fortified with omega-3 fatty acids.
11. I understand that willful false or misleading statements made by me with respect to the present Application may result in any patent maturing from the Application being adjudicated invalid or not enforceable.

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12. By signing below, I affirm that all statements made herein based on knowledge are true, and that all statements made herein on information and belief are believed to be true.

Signed this 9 day of January,
2008


Steven C. Zicker, DVM, Ph.D.